Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

In the matter of Isidoro Rodriguez, Esq.,

Petitioner.

On Petition For Writ of Certiorari
to the United States Court of Appeals for the
Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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On November 27, 2006, the Virginia State Bar Disciplinary Board ("VSBDB"), issued a *void* order revoking Isidoro Rodriguez' ("Rodriguez") license to practice law in the Commonwealth of Virginia. But, the VSBDB issued a *void* order: (a) because the Rule of Supreme Court of Virginia establishing the VSBDB as part of the attorney disciplinary system usurped the power granted only to the General Assembly of Virginia to create courts and appoint judges; and, (b) because the VSBDB is guilty of "prosecutorial vindictiveness" for retaliating against Rodriguez due to his petitioning the legislature and for his litigating to enforce his substantive Federal and Virginia statutory rights as a parent and attorney against the government. The Supreme Court of Virginia on June 29, 2007, affirmed the VSBDB *void* order. Disregarding the Rule of Law under the *Void* Order Doctrine and the prohibition under the Rules Enabling Act, 28 U.S.C. § 2072(b), of the use of Rules to deprive a citizen of substantive statutory rights, as well as the record of animus, the U.S. Court of Appeals for the Fourth Circuit ("4th Circuit"), entered an order of reciprocal disbarment by summarily"deeming" the VSBDB *void* order as one validly issued by a court and a judge.

QUESTION PRESENTED FOR REVIEW

I. Whether the *Void* Order Doctrine and the Rules Enabling Act Prohibit the 4th Circuit from Reciprocally Disbarring Rodriguez Based on Summarily "Deeming" the VSBDB's *Void* Order as Validly Issued by a Court and a Judge Authorized by the General Assembly of Virginia?

PARTY TO THE PROCEEDINGS

The caption of the case does contain the name of the only party, who is not a corporation.

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CITATIONS TO OPINIONS BELOW

The unpublished opinion of the 4th Circuit challenged here is reproduced at A–3.

The unpublished *void* order of the Supreme Court of Virginia affirming *void* order of the VSBDB are reproduced respectively at A-16 and A-18.

STATEMENT OF JURISDICTION

The unpublished opinion of the 4th Circuit was entered on October 20, 2008. The jurisdiction of this Court is invoked pursuant 28 U.S.C. §§1254(1) and 2072.

STATEMENT REQUIRED BY RULE 29.4

The Court is informed that 28 U.S.C. § 2403, may apply and this Petition has been served upon the Solicitor General of the Untied States and the Attorney General of the Commonwealth of Virginia.

CONSTITUTIONS, FEDERAL AND VIRGINIA STATUTES INVOLVED ARE PUBLISHED IN THE ADDENDUM AT THE END

STATEMENT OF THE CASE

A. Proceeding Before VSBDB.

Since the early 1980's Rodriguez has been a member in good standing of the Supreme Court of Virginia, the U.S. Ct. of Appeals for 4th Circuit, and the

U.S. Dist. Court for the Eastern District of Va.

After serving in various White House appointments in both the Carter and Reagan Administrations, Rodriguez established and has maintained in Barranquilla, Colombia since 1987 a successful law office specialized in serving nonresident Hispanics by *pro hoc vice* civil litigation before the 2nd, 3rd, 4th, 11th, D.C. Circuits, and this Court.[1]

Subsequently, the record confirms that as a result of Rodriguez's successful litigation against the policies of the U. S. Departments of Justice ("DOJ') to target nonresident Hispanics,[2] a criminal enterprise was undertaken by DOJ, its independent contractor the National Center for Missing & Exploited Children, their employees, agents and lobbyist, and attorneys

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[1]The *Legal Times* confirmed that Rodriguez was the only know U.S. federal practitioner who resided outside of the U.S. and practices before the Federal courts, after Rodriguez argued and won *Martinez v. Lamagno and DEA*, 515 U.S. 417 (1995)(A FTCA involving a negligent DEA agent who caused an accident while driving drunk and having sex. The 4th Cir. and Dist Ct for E.D. of Va., were reversed by this Court's holding that an Article III judge must review the Attorney General's Scope of Employment Certification-"James Bond Defense").

[2]In addition to *Martinez supra., see Organization JD Ltda. v. Assist U.S. Attorney Arthur P. Hui and U.S. Dept of Justice*, 2nd Cir. No. 93-6019 and 96-6145; and, *Lopez v. First Union*, 129 F3.rd. 1186 (11th Cir. 1997)(Rodriguez successfully stopped DOJ's unlawful policy of compelling the disclosing of bank information of all nonresident Hispanic surnamed accounts in the U.S. and then the seizing of their funds without an opportunity to be heard).

Mr. Eric Holder, Ms. D. Jean Veta, and Covington & Burling LLP, as well as Ms. Susan Brinkerhoff, and Proskauer Rose LLP ("Holder *et al.*"), as well as Judge Richard Roberts of the U. S. District Court for the District of Columbia ("Federal Malfeasors"), the Fairfax County J&D District Court and Circuit Court, the Virginia Court of Appeals, and the Supreme Court of Virginia ("Va. Courts"), to obstruct the parental rights of Rodriguez in violation of 18 U.S.C. § 1204, by not complying with their ministerial and judicial responsibilities to secure visitations under *Art 21* of the Hague Convention on the Civil Aspects of International Child Abduction, Oct 25, 1980, T.I.A.S. No. 11670, 19 I.L.M 1501 ("the Treaty"), and the Virginia's Uniform Child Custody Jurisdiction and Enforcement Act, Va. Code 20-146.25 ("Va. UCCJEA").[3]

Based on this evidence of malfeasance Rodriguez: (1) petitioned both Congress and the Virginia General Assembly for an investigation of the on going violations of the Treaty and Va. UCCJEA; (2) filed a criminal complaint against the Federal Malfeasors and Va. Courts on December 13, 2004; (3) filed a First Amended Verified Complaint on March 7, 2005, to include a civil cause of action under the Racketeer Influence and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1965, *Isidoro Rodriguez, Esq.*

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[3]The apparent motive was to further punish Rodriguez litigating against DOJ's policy that outside the continental U.S. no fundamental Constructional or statutory rights exist which limits the U.S. government's power, thus, Rodriguez's 14 year-old U.S. citizen son had no right to compel DOJ return him back to Virginia from Colombia.

and Isidoro Rodriguez-Hazbun v. National Center for Missing and Exploited Children et al., D.C. No. 03-0120 (Roberts, J.)("*Rodriguez I*"); and (4) filed both Federal Tort Claim and Virginia Tort Claim Notices.

In retaliation for Rodriguez' above acts, the Federal Malfeasors and Va. Courts compounded their criminal obstruction of Rodriguez' parental rights by entering into a business conspiracy to damage Rodriguez' reputation, business, profession, and right to employment as an attorney in violation VA Code § 18.2-499 and 500, and 18 U.S.C. §§ 241, 242, and 1513.

In furtherance of this criminal enterprise Holder *et al.,* on behalf of the Federal Malfeasors and Va. Courts, filed a fraudulent bar complaint with the Virginia State Bar Disciplinary Board ("VSBDB") in October 2003 alleging that Rodriguez violated ethical standards by litigating to enforce his federal and Virginia statutory rights to visitation with his son (A-5, Footnote 2).[4]

In August 2005, Rodriguez petition Congress to oppose the confirmation of John G. Roberts as Chief Justice based on the evidence of violation of 18 U.S.C. § 1001, by his making false statement to the Senate Judiciary Committee during his confirmation hearing, and other acts outside of his judicial capacity

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[4]Also, the Holder *et al.*, conspired to deprive Rodriguez of his statutory property right in his perfected Virginia Attorneys Lien under Va. Code § 54.1-3932, by having Rodriguez's former client file a complaint for litigating to enforce his statutory lien on approx. $10 Billion *treasure trove* sunk off the coast of Colombia.

evidencing his aiding and abetting the criminal obstruction of Rodriguez's right as a father under the Treaty and Virginia's UCCJEA.

In response, the VSBDB used the Holder *et al.* bar complaint to vindictively investigate, prosecute, and conduct an unauthorized disciplinary hearing. On October 27, 2006, disregarding that in *Canter v. Cohen*, 442 F.3d 196 (4th Cir, March 2006), the 4th Circuit confirm the duty of DOJ and VA. Courts to secure visitation, the VSBDB issued a *void* order revoking Rodriguez' license to practice law in Virginia for his litigating to enforce his Federal and Virginia statutory rights (A-5, Footnote 2, and A-18). The VSBDB *void* order was affirmed by the Supreme Court of Virginia on June 28, 2007 (A-16). This Court denied review, *Isidoro Rodriguez, Esq. v. Supreme Court of Virginia et al.,* (S. Ct. No. 07-419, November 2, 2007).

B. Proceedings Before the 4th Circuit

Although Rodriguez had not been suspended or disbarred by any court, but solely based on the VSBDB's *void* order the Clerk for the 4th Circuit issued on November 17, 2006, a Notice to Show Cause to Rodriguez under Fed. R. App P. 46(b).

The Notice was delivered on December 2, 2006. On December 15, 2006, within thirty days from the issuance of the Notice, Rodriguez sent by Priority postage Certified Mail his Response, Request for Hearing, and Declaration of Admission.

However, on December 22, 2006, Rodriguez

received an Order of the 4th Circuit dated December 21, 2006, disbarring him. Rodriguez filed a Motion for Reconsideration of his summary disbarment because the 4th Circuit incorrectly calculated the date to respond from November 17, 2006, despite that the fact service occurred of December 2, 2006, and that Rodriguez sent his response with the thirty (30) days. On March 23, 2007, the 4th Circuit granted the motion and reissued the Notice. On April 2, 2007, Rodriguez filed his Second Response to the Notice to Show Cause.

On April 25, 2008, the 4th Circuit issued an unpublished order Docket No. No. 08-1444, *In Re: Isidoro Rodriguez*, denying Rodriguez's Petition for Writ of Mandamus to be protected as a victim pursuant to 18 U.S.C. § 3771(A–14). A petition for rehearing *en banc*, and to disqualify based on a record of 4th Circuit animus to Rodriguez was denied on May 15, 2008 (A–13).

On May 28, 2008, an unpublished order was issued by Judge Leonie M. Brinkema, U.S. Dist. Ct. for the E. D. VA, denying Rodriguez' protection under 18 U.S.C. § 3771, and without any Show Cause Notice ordered automatic enforcement of *VSBDB void* order (A–11). On July 16, 2008, the 4th Circuit denied Rodriguez's motion for a TRO and Injunction to the US Dist. Ct. ED Va. for the denial of a Show Cause hearing and automatic enforcement of the VSBDB's *void* order (A–10).

On September 25, 2008, argument was presented to the 4th Circuit. On October 20, 2008, the 4th Circuit issued its opinion directing reciprocal disbarment

(A–3), by holding that the VSBDB *void* order "must be deemed valid in this proceeding" (A-9).

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The decision of the 4th Circuit should not be allowed to stand because it disregarded the *Void* Order Doctrine and the Rules Enabling Act 28 U.S.C. § 2072(b)("Rules Enabling Act"), to sanction a departure from the mandates of both the Fifth and Fourteenth Amendments to the U.S. Constitution and of Article I § 11 of the Virginia Constitution, as well as the Treaty and Va. UCCJEA, so to call for an exercise of this Court's power of supervision.

I. THE 4TH CIRCUIT VIOLATED RODRIGUEZ' RIGHT TO SUBSTANTIVE AND PROCEDURAL DUE PROCESS BY SUMMARILY "DEEMING" VALID THE VSBDB's *VOID* ORDER.

Due Process, has been generally defined as, "**the right to a fair hearing before a tribunal with the power to decide the case.**" Bryan A. Garner, Black's Law Dictionary, at page 538 (8th ed. 1999). (Emphasis added). Thus, a valid judgment may not be rendered in violation of the constitutional protections of *due process* under both the U. S. and Virginia Constitutions. *See* Restatements, Judgments § 4(b); *See also*, *Earle v. McVeigh*, 91US 503, 23 L Ed 398 (1999).

This Court has stated that the standard in determining if a violation of *due process* has occurred

is, " to see whether this process conflicts with any of the [Constitutional] provisions. If not found to be so, we must look to those statute law . . . ." *Murray's Lessee v. Hoboken and Improvement Co.*, 18 How (59 U.S.) 272, 276-277 (1856).

This standard has been violated by the 4th Circuit's surreally "deeming" valid the VSBDB's *void* order (A-9), without consideration of the evidence of violation of both the Constitution of Virginia and Va. Code. In sum, the 4th Circuit has violated Rodriguez' right to *due process* under both the Fifth and Fourteenth Amendment to the U.S. Constitution (Add-a), and Article I, § 11, because by "deeming" the *void* order to be valid the 4th Circuit has sanctioned the creation of an unauthorized attorney disciplinary system in violation of Article VI § 1, § 5, and § 7 of the Constitution of Virginia, and Va. Code § 54.1-3910, § 54.1-3915, § 54.1-3935 (Add-c and e), which has deprived Rodriguez of an "**opportunity to be heard**" before a court, denied Rodriguez of his right to show an "**infirmity of proof**" because of the violations of Rodriguez' federal statutory rights based on the record of a criminal conspiracy to vindictively prosecute Holder *eta al.* the fraudulent bar complaint, such that "**grave reason[s] existed**" to not permit reciprocal enforcement by any Federal court. *Selling v. Redford*, 243 U.S. 46, 51 (1917) (Emphasis added).

In *Selling*, supra, this Court held that solely by the action of "a court" with jurisdiction may one who has secured admission be disbarred from practicing before it or any Federal Court by satisfying the following benchmark:

1, that the state procedure, **from want of notice and opportunity to be heard**, was wanting in due process, 2, that there was such an **infirmity of proof as to facts found to have established the want of fair private and professional character** as to give rise to a clear conviction on our part that we could not, consistently with our duty, accept as final the conclusion on that subject, or 3, **that some other grave reason existed** which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, **under the principles of right and justice**, we were constrained so to do. *Id.* At 51. (Emphasis added).[5]

Subsequently, in *In re Disbarment of Isserman*, 345 U.S. 286 at 288, 73 S.Ct. 676, 97 L.Ed. 1013 (1953), this Court reconfirmed that disbarment by a state does not automatically disbar members of a Federal bar. In *Schware v. Board of Bar Examiners of New Mexico*, 353 U.S. 232, 239, 77 S.Ct. 752, 1 L.Ed.2d 796 (1957), this Court went on to hold at footnote 5, "[w]e need not enter into a discussion whether the practice of law is a "right" or "privilege." Regardless of how the State's

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[5]This rule as to review of disbarment is consistent with that of *Ex parte Burr*, 9 Wheat. 529 at 532, announced by Chief Justice Marshall, and has been the guide for United States Courts, that is unless there is "**irregularity in the mode of proceeding which would justify the interposition**," the Court will not interpose itself. *See also, Ex parte Secombe*, 19 How. 9; *Ex parte Bradley*, 7 Wall. 364; and, *Thatcher v. United States*, 212 F. 801, 804.

grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the State's grace." *Ex parte Garland,* 4 Wall. 333, 379 (Emphasis added). In *Konigsberg v. State Bar of California*, 353 U.S. 252 (1957), the Court stated that,

> We recognize the importance of leaving States free to select their own bars, but it is equally important that the State not exercise this power in an arbitrary or discriminatory manner, nor in such way as to impinge on the freedom of political expression or association. A bar composed of lawyers of good character is a worthy objective, but it is unnecessary to sacrifice vital freedoms in order to obtain that goal. It is also important both to society and the bar itself that lawyers be unintimidated -- free to think, speak, and act as members of an Independent Bar." *Id* at 273. (Emphasis added)

In *Theard v. United States*, 354 U.S. 278 (1957), the Court held that: (1) while a lawyer is admitted into a federal court by way of a state court, he is not automatically sent out of the federal court by the same route; (2) ample opportunity must be afforded to show cause why an accused practitioner should not be disbarred, and an order of disbarment by a state court is not conclusively binding on federal courts; and, (3) the "principles of right and justice" do not require a federal court to enforce automatic disbarment of a lawyer, but the standards defined in *Selling, supra*, are

to be followed.[6]

This Court in *In re Ruffalo*, 390 U.S. 544 (1968), held that (a) while state disbarment action is entitled to respect, it is not conclusively binding on the federal courts. *Theard v. United States*, 354 U.S. 278, 281-282. *Id.* 547; and (b) a lawyer charged with misconduct in a disbarment proceeding is entitled to procedural due process.

The record establishes that Rodriguez has been punished in retaliation for his petitioning Congress and the General Assembly, as well as for litigating as an independent attorney to enforce his Federal and Virginia statutory parental and property rights. From a review of the above leading cases, this is in and of it-

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[6]Mr. Justice Douglas, with whom Mr. Justice Black, *In Matter of Crow*, 359 U.S. 1007, 79 S.Ct. 1152, 3 L.Ed.2d 1025 (1959), stated in their dissent that,

> It is for us to make our own determination as to the fitness of an attorney to remain on our rolls. State proceedings of disbarment, though presumptively correct, are not binding. See *Selling v. Radford*, 243 U.S. 46, 37 S.Ct. 377, 61 L.Ed. 585. This is not the first time that state disbarment proceedings have been challenged as lacking in procedural due process. See *Isserman v. Ethics Committee*, 345 U.S. 927 (dissent). Sometimes we can act on the face of the record as where no serious issues of fact are involved. See *In re Isserman*, 345 U.S. 286, 73 S.Ct. 706, 97 L.Ed. 1357, reversed 348 U.S. 1, 75 S.Ct. 6, 99 L.Ed. 3. But the important questions presented here turn on factual issues. The return in this case contains allegations which, if proved, would suggest that the **requirements of fair procedure, without which no citizen can be deprived of his livelihood**, were not satisfied in the Ohio proceedings. *Id.* at 1009. (Emphasis added).

self a "grave reason" why the 4th Circuit was wrong in granting reciprocal disbarment based on the VSBDB's *void* order usurping judicial authority.

i. The 4th Circuit cannot "deem" the VSBDB void order to be valid because Rodriguez has denied the "opportunity to be heard" by a court authorized by the laws of Virginia to revoke an attorneys license.

The record confirms that Rodriguez has been denied an "opportunity to be heard by a court" regarding the "infirmity of proof that litigating to enforce his Federal and Va. Code statutory rights can be found to constitute an ethical violation of an attorney's code of conduct to serve the public.

This Court has held that an *invalid* and *void* order can be attacked in any proceeding where they come into issue. *Pennoyer v. Neff*, 95 US 714 (1877); and, *Jordon v. Gilligan*, 500 F.2d 701, 710 (6th Cir. 1974)("a void judgment is no judgment at all and is without legal effect") (Emphases added).

Consistent with this long established rule this Court in *Nguyen v. United States*, 539 U.S. 69 (2003), recently held that any decision of an improperly constituted judicial body must be vacated, i.e. judicial authority cannot be delegated (*Judici officium sum excedenti non paretur*, "To a judge who exceeds his office or jurisdiction no obedience is due"). In *Nguyen*, this Court assessed a series of judgments rendered by a federal appellate court panel on which a "non Article III judge" served. *Id.* at 69. Vacating this group of

judgments, this Court reasoned that an appellate panel that included a non-Article III judge proved an "impermissible" and "unauthorized" decisional body, one that necessarily conflicted with a **"strong policy concerning the proper administration of judicial business."** *Nguyen* at 81. Because the "validity" of the relevant judicial body was fundamentally flawed, and because this "plain defect" was incurable, *Nguyen* explained, the decisions reached by that body must be vacated. *Nguyen* at 83. See also: *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 83-85 (1982) (holding that delegation to adjunct bankruptcy judges of powers beyond those conferred to non-Article III judges rendered an entire administrative scheme unconstitutional).

Likewise under in Virginia, "[a] *void* judgment is one that has been . . . **entered by a court that did not have jurisdiction over the subject matter**. . . ." *Rook v. Rook*, 233 V. 92, 353 S.E2d 756, 758 (1987)(Emphasis added). As explained in *Nelson v. Warden*, 262 Va. 276, 552 S.E.2d 73 (2001),

> **Subject matter jurisdiction is granted by constitution or statute**, it cannot be waived, **and any judgment rendered without it is *void ab initio.*** Lack of subject matter jurisdiction may be raised at any time, in any manner, before any court, or by the court itself. (Emphasis added).

In total disregard of these controlling decisions the 4th Circuit "deemed" that the VSBDB had jurisdiction and judicial power to act as a "court" and "judges." But, the 4th Circuit's holding is a violation of

Rodriguez's substantive and procedural due process for the following reasons:

First, pursuant to Article VI § 1 and § 7 of the Constitution of Virginia (Add-c), **solely** the General Assembly has the authority to establish courts of records in Virginia and appoint judges.

Regarding the judicial power to revoke an attorney's license,[7] the Supreme Court of Virginia explained in *Legal Club of Lynchburg v. A.H. Light*, 137 Va. 249, 119 S.E. 55 (1923), that,

> Independent of statutory authority, all courts of record in Virginia have inherent power in a proper case to suspend or annul the license of an attorney practicing in the particular court which pronounces the sentence of disbarment. **The power to go further and make suspension or revocation of license effective in all other court of the Commonwealth must be conferred by statute.** *Fisher's Case, 6 Leigh* (33 Va.) 619. (Emphases added).

In sum, the judicial power of the courts to revoke an attorney's license outside of that particular court is

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[7] "Judicial power," is defined as, "**[t]he authority vested in courts and judges to hear and decide cases and make binding judgements on them**: . . . . " Bryan A. Garner, Black's Law Dictionary, at 864 (8th ed. 1999). The Supreme Court of Virginia has stated clearly that, "**[t]he power to discipline [an attorney] is judicial in nature.**" *Norfolk Bar Ass'n v. Drewry*, 161Va. 833 at 836, 172 S.E. 282 (1934).(Emphasis added).

controlled by the General Assembly passing a statute, *see* When Has the Supreme Court of Appeals Original Jurisdiction of Disbarment Proceedings? R.H.C. Virginia Law Review, Vol. 10, No. 3 (Jan. 1924), pp. 246-248.[8]

Second, the General Assembly by enacting Va. Code § 54.1-3935 (Add-c), to extend the power of the court beyond the limits defined in *Fisher's Case, supra.* established the exclusive procedure under which a Virginia attorney's license can be revoked.

ii. The VSBDB is not a court with authority to decide facts to revoke an attorneys license.

Both Va. Code § 54.1-3910 and 3935 (Add-e), confirms that the Virginia State Bar ("VSB") is merely an administrative arm of the Supreme Court of Virginia with **limited administrative authority** to aid a court of record upon its request-to conduct investigation and the prosecution a complaint filed with the court.

The General Assembly did not create the VSBDB. It is neither a court of record nor does it have judicial or quasi-judicial power to review any facts.[9]

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[8]The government's assertion below that the VSBDB has authority to act based on a delegation of judicial authority by Supreme Court of Virginia under its Rules, usurps the General Assembly's power and is a violation of separation of power.

[9]Part 6, § IV, ¶13(B)(5)(a) of the Rules of the Supreme Court of Virginia authorizes the VSB to merely consider the revocation or suspension of an attorney in another jurisdiction for

iii. Because Supreme Court of Virginia is without authority to either create courts or appoint judges, the 4th Circuit cannot deem the VSBDB's void order to be valid.

Pursuant to Article VI, § 5 of the Constitution of Virginia (Add-c), and VA. Code § 54.1-3915 (Add-e), as well as "the well recognize rule of construction that if a Rule of the Supreme Court [of Virginia] is at variance with a statutory enactment, the terms of the statute must prevail." 1996 Va. AG 23, at page 2, the Supreme Court of Virginia has neither authority to delegate judicial power to the VSBDB nor the power to create an attorney disciplinary system in violation of that established by the General Assembly under Va. Code § 54.1-3935.

As explained by the Supreme Court of Virginia, when the General Assembly delegated authority to it to promulgate regulations, the regulations must neither exceed the scope of the authority delegated nor be inconsistent with it. *Ames v. Town of Painter*, 239 Va. 343, 389 S.E.2d 702 (1990). Correspondingly, the regulations must also contain "definite standards to guide . . . the exercise of the power." *Id.*, 239 Va. at 349.

Thus, although it is true that Va. Code § 54.1-3909, granted the Supreme Court of Virginia authority to promulgate rules and regulations defining the practice of law, it cannot be permitted to give words a

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the limited purpose of preparing "a complaint, verified by affidavit" to a court in accordance with Va. Code § 54.1-3935(a)(Add-e). *See Goldfarb v. Virginia State Bar*, 421 U.S. 773 (1975), at footnote 2.

construction that would allow it to establish the VSBDB as a court and give its members the judicial authority to revoke an attorney's license. *See Mozley v. Prestwould Bd. of Dirs.*, 264 Va. 549, 554, 570 S.E.2d 817, 820 (2002).

Consequently, the 4th Circuit's "deeming" that the VSBDB issued a valid order is a surreal violation of the Rule of Law which has sanction the denial of Rodriguez' right to an opportunity to be heard by a court. Ergo, the 4th Circuit has sanctioned a violation of substantive and procedural due process.

The record establishes that VSB and the Supreme Court of Virginia usurped the jurisdiction granted exclusively to the courts of Virginia and to its judges appointed solely by the General Assembly. They illegally revoked Rodriguez' license in furtherance of a criminal enterprise which is evidenced by Holder *et al.'s* bar complaint in retaliation for Rodriguez' petitioning Congress and the General Assembly, as well as for litigating to enforce his statutory rights as a father and to enforce his statutory property rights in his perfected Virginia Attorney's Lien (A-5, footnote 2, A-18).

Thus, the 4th Circuit has violated *Selling v. Redford*, 243 U.S. 46, 47-48 (1917), and Va. Code § 54.1-3910 and 3935.

iv. The Supreme Court of Virginia cannot affirm the VSBDB void order, and the 4th Circuit cannot "deem" it valid.

As explained by the Supreme Court of Virginia in *Morrison v. Bestler,* 239 Va. 166, 167-170, 387 S.E.2d 753 (1990),

> The term jurisdiction embraces . . . subject matter jurisdiction, which is the authority granted by the constitution or statute to adjudicate a class of cases or controversies. . . .**which cannot be waived or conferred on the court by agreement of the parties.** *Lucas v. Biller,* 204 Va. 309, 313, 130 S.E.2d 582, 585 (1963). A defect in subject matter jurisdiction cannot be cured by reissuance of process, passage of time, or pleading amendment. While a court always has jurisdiction to determine whether it has subject matter jurisdiction, **a judgment on the merits made without subject matter jurisdiction is null and void.** *Barnes v. American Fert. Co.,* 144 Va. 692, 705, 130 S.E. 902, 906 (1925). **Likewise, any subsequent proceeding based on such a defective judgment is void or a nullity.** *Ferry Co. v. Commonwealth,* 196 Va. 428, 432, 83 S.E.2d 782, 784 (1954). (Emphasis added).

Thus, Rodriguez' challenges to the VSBDB investigation and proceedings neither confers any jurisdiction or judicial power to revoke his license, nor can the Supreme Court of Virginia affirm the VSBDB *void* order and make it valid one.

v. *The 4th Circuit has Sanctioned Prosecutorial Vindictiveness by summarily "deeming" VSBDB 's void order as being valid.*

The United States Supreme Court had held that, "[d]isbarment, designed to protect the public, is a punishment or penalty imposed. . . . [Thus, t]hese are **adversary proceedings of a quasi-criminal nature.** *Cf. In re Gault*, 387 U.S. 1, 33." *In re Ruffalo*, 390 U.S. 544, 550-551 (1968). Accordingly, compliance with the requirement of substantive and procedural *due process* must attach to the disciplinary proceeding, as well as all collateral efforts to enforce the order to disbar the attorney from practice in Federal court.

"A prosecution is vindictive and a violation of due process if undertaken '[t]o punish a person because he has done what the law plainly allows him to do.' " *United States v. Polland*, 994 F.2d 1262, 1266 (7th Cir.1993) (quoting *United States v. Goodwin*, 457 U.S. 368, 372, 102 S.Ct. 2485, 2488, 73 L.Ed.2d 74 (1982)), cert. denied, ··· U.S. ····, 114 S.Ct. 1115, 127 L.Ed.2d 425 (1994)(Emphasis added).

It is normally presume that the governments prosecutor's decision is valid. *Goodwin*, 457 U.S. at 384, 102 S.Ct. at 2494. Therefore, in order to be successful on a claim of prosecutorial vindictiveness, a citizen must affirmatively show through objective evidence that the governments conduct at issue was motivated by some form of animus, such as a personal stake in the outcome of the case or an attempt to seek self-vindication. *Id.* Also, in certain, limited circumstances, a defendant is entitled to a presumption of prosecutorial vindictiveness. *Blackledge v. Perry*, 417 U.S. 21, 28, 94 S.Ct. 2098, 2102, 40 L.Ed.2d 628 (1974) (presumption arises where circumstances surrounding the governments action give rise to a "realistic

likelihood of 'vindictiveness' "). Where either the presumption of vindictiveness applies or the citizen has come forward with objective evidence of actual vindictiveness, the burden shifts to the government to come forward with evidence that the motivation behind the charges was proper. This is consistent with 18 U.S.C. §§ 241, 242, 1204, and 1513, making it a federal crime to obstruct the federal parental rights, to punish a citizen by denying him employment because he has litigated to enforce his federal rights

Here the indisputable the record confirms that the VSBDB, who is authorized pursuant to Va. Code to investigate and prosecute a hearing before a court, is guilty of prosecutorial vindictiveness by taking retaliatory action to punish and stigmatize Rodriguez for petitioning Congress and the Virginia General Assembly, for litigating to enforce his rights as a parent under the Treaty and Va UCCJEA, and for challenging their usurping judicial power.[10]

II. THE 4TH CIRCUIT VIOLATED THE RULES ENABLING ACT'S PROHIBITION BY IT SANCTIONING THE PUNISHING OF RODRIGUEZ FOR LITIGATING TO ENFORCE HIS "SUBSTANTIVE" STATUTORY RIGHTS.

To place some control on the Judicial Branch's

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[10]The evidence also confirm DOJ retaliated against Rodriguez for litigating against the use of prohibited *bills of attainder* in violation of the rights of U.S. citizens and nonresident Hispanics, and the assertion of immunity from accountability for malfeasance.

violation of the rights of citizens, Congress "flex[ed] its legislative muscle in the procedural rule making arena," by passing the Rules Enabling Act, 28 U.S.C. § 2072 (1982). Linda S. Mullenix, Judicial Power and the Rules Enabling Act, 46 Mercer L. Rev. 733, 735 (1995); *see also* Linda S. Mullenix, Hope Over Experience: Mandatory Informal Discovery and the Politics of Rule making, 69 N.C. L. Rev. 795, 798-800 (1991) (discussing "enhanced public participation and scrutiny . . . [in] judicial rule formation").

This Court has held that the Federal Rules of Appellate procedure must be interpreted in keeping with the Rules Enabling Act, which mandate that said Rules "shall not abridge, enlarge or modify substantive rights." *Amchem Products, Inc. v. Winsor*,, 117 S.Ct. 2231, 2244 (1997).

Thus, based on the Rules Enabling Act, 28 U.S.C. § 2072(b), the 4th Circuit use Fed R. App. P. 46 deprive Rodriguez of his substantive rights protected by the United States Constitution, federal statute, and the Code of Virginia.

In the instant action the record establishes that VSBDB and the Supreme Court of Virginia have issued a *void* order by violating Va. Code § 54.1-3915 (Add-e), to punish Rodriguez for exercising his substantive rights of: first, petitioning the General Assembly and Congress for an investigation of the unlawful collusion of DOJ with the Federal and Courts of Virginia: and second, for litigating to enforce his statutory visitation rights as a parent pursuant to *Art 21* of the Treaty, and Va. UCCJEA)(*see Canter v. Cohen*, 442 F.3d 196

(March 21, 2006); 2006 U.S. App. LEXIS 6915) (A-5, Footnote 2).

In *McDonald v. Smith*, 472 U.S. 479, 486 (1985), this Court recognized that the right to petition the Government requires stringent protection. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." *United States v. Cruikshank*, 2 Otto 542, 92 U.S. 542, 552, 23 L.Ed. 588 (1876). The right to petition is "among the most precious of the liberties guaranteed by the Bill of Rights," *Mine Workers v. Illinois Bar Assn.*, 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed.2d 426 (1967), and except in the most extreme circumstances citizens cannot be punished for exercising this right "without violating those fundamental principles of liberty and justice which lie at the base of all civil and political institutions," *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct. 255, 260, 81 L.Ed. 278 (1937).

Furthermore, pursuant to Article VI § 5 of the Constitution of Virginia (Add-d), and Va. Code § 54.1-3915 (Add-e), the Supreme Court of Virginia is prohibited from promulgating court rules which conflict with or limit an attorney's right to litigate to enforce statutory rights,[11] including the right to petition Congress and the General Assembly. *See* 1996 Va. AG

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[11] Part 6, § IV, ¶ 13 (G)(1)(a)(1) and (5) of the Rules of the Supreme Court of Virginia prohibit the VSBDB from investigating the actions in compliance and "protected by superseding law."

23. Consistent with this restriction, as noted above even the *Rules of the Virginia Supreme Court* has prohibited the VSB from investigating an attorney for enforcing his statutory rights.

Here the 4th Circuit has approved by invoking Fed. R. App. P. 46(b)--the VSBDB and Supreme Court of Virginia's use of *void* orders violating the prohibition against the taking of disciplinary action against Rodriguez for petitioning the legislature and litigating to enforce his substantive federal statutory rights to sue for damages for the obstruction of his right as a parent and depriving him of his property and employment right as a attorney.

Because there has been an usurping of jurisdiction and judicial authority, Rodriguez has been denied procedural due process by being deprived of an opportunity and right to be heard by an authorized court. The 4th Circuit was in error in "deeming" that VSBDB was valid, despite the clear deprivation of Rodriguez's of rights under the Due Process Clause of the Fourteenth Amendment.

Consequently, the 4th Circuit order which sanctions the punishing of Rodriguez for litigating to enforce his rights is a violation of the Rules Enabling Act, and must be vacated.

CONCLUSION

Here the record indisputable confirms that Holder *et al.*, filed a fraudulent bar complaint to retaliate, punish and stigmatize Rodriguez, and the VSBDB issued a *void* order and conducted "prosecutorial vindictiveness" in criminal violation of 18 U.S.C. §§ 241, 242, 1204, and 1513: (a) because Rodriguez litigated against DOJ to enforce Rodriguez' statutory rights as a father to compel compliance with the ministerial and judicial duties under the Treaty, US Code and Va UCCJEA (App-18); (b) sued for damages; and, (c) because Rodriguez exercised his right under the First Amendment and Constitution of Virginia to petition Congress and Virginia General Assembly to investigate the unlawful collusion of DOJ with the Federal and Virginia Judicial Branch.[12]

This evidence conclusively establishes that Rodriguez has been denied substantive and procedural due process based on the issuance of the VSBDB's *void* order-which is neither a court nor composed of judges appointed by the General Assembly, but instead the unauthorized agents of the Supreme Court of Virginia.

Therefore, the 4th Circuit tramples on the mandate of separation of power and checks and balances under the Constitutions of the United States

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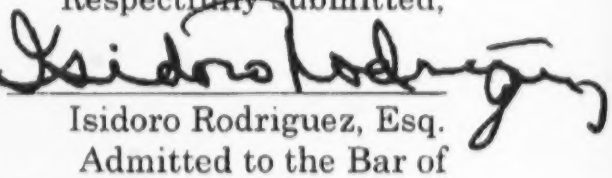
[12]Federalist 47, states that Virginia's Constitution declares, "that the legislative, executive, and judicial departments, shall be separate and distinct: so that neither exercise powers properly belonging to the other. . . ." Washington Square Press, p 109.

and Virginia. In summarily "deeming" that the VSBDB had jurisdiction and judicial authority to revoke Rodriguez' license--the 4th Circuit has deprived Rodriguez of his right to practice before that court in violation of *due process* under the 5th and 14th Amendments (Add-a), as well as Article I, § 11 of the Constitution of Virginia (Add-c).

For the above reasons, the Petition must be granted.

Respectfully submitted,

By 

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U.S. CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment of the United States Constitution provides:

No person shall . . . be deprived of life, liberty, or property, without due process of law; . . . .

The Due Process Clause of Section 1 of the Fourteenth Amendment to the United States Constitution provides:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

FEDERAL STATUTES VIOLATED

RULES ENABLING ACT--28 U.S.C. § 2072(a) The Supreme Court shall have the power to prescribe general rules of practice and procedure and rules of evidence for cases in the United States district courts (including proceedings before magistrate judges thereof) and the courts of appeal.

(b) Such rules shall not abridge, enlarge, or modify any substantive right. . . .

Federal Rules of Appellate Procedure Rule 46(b) Suspension or Disbarment

(1) Standard. A member of the court's bar is

subject to suspension or disbarment by the court if the member: (A) has been suspended or disbarred from the practice in any other court; or (B) is guilty of conduct unbecoming a member of the court's bar.

(2) Procedures. The member must be given an opportunity to show good cause, within the time proscribed by the court, why the member should not be suspended or disbarred.

(3) Order. The court must enter an appropriate order after the member responds and a hearing is held, if requested, or after the time prescribed for a response expires, if no response is made.

FEDERAL CRIMINAL STATUTES VIOLATED

18 U.S.C. § 241 - Conspiracy against rights, states in relevant part, "[i]f two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State . . . in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . . They shall be fined under this title or imprisoned not more than ten years, or both . . . .

18 U.S.C. § 242 - Deprivation of rights under color of law, states in relevant part that, "[w]hoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State . . . to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, . . ., shall be fined under this title or imprisoned not more than one year, or both . . .

18 U.S.C. § 1204 - International parental kidnapping.--(a) Whoever. . . retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both.

18 U.S.C. § 1513. Retaliating against a witness, victim, or an informant, states in relevant part, "(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

CONSTITUTION OF VIRGINIA INVOLVED

Article I, § 11. Due Process of Law; . . . ;, provides,[t]hat no person shall be deprived of his . . . property without due process of law; . . . .

Article VI, § 1. Judicial power; jurisdiction. — The judicial power of the Commonwealth shall be vested in a Supreme Court and in such other courts of original or appellate jurisdiction subordinate to the Supreme Court as the General Assembly may . . . establish. (Emphasis added).

Article VI, § 5. Rules of practice and procedure. — The Supreme Court shall have the authority to make rules governing the course of appeals and the practice and

procedures to be used in the courts of the Commonwealth, **but such rules shall not be in conflict with the general law as the same shall, from time to time, be established by the General Assembly.**(Emphasis added)

Article VI, § 7. Selection . . . of judges. The justice of the Supreme Court of shall be chosen by vote of the . . . General Assembly. . . . **The judge of all other courts of record shall be chosen by the . . . General Assembly** . . . . (Emphasis added).

VIRGINIA CRIMINAL STATUTES VIOLATED

Va. Code § 18.2-481. Treason defined; how proved and punished. — Treason shall consist only in: . . . . (5) Resisting the execution of the laws under color of its authority. Such treason,. . . , shall be punishable as a Class 2 felony.

Virginia Code § 18.2-499. Combination to injure others in their reputation, trade, business or profession: right of employees

(a) Any two or more persons who shall combine, associate, agree, mutually undertake or concert together for the purpose of wilfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever, or for the purpose of wilfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another form doing or performing any lawful act, shall be jointly and severally guilty of a Class 3 misdemeanor. . . .

VIRGINIA CIVIL CODE INVOLVED

Va. Code § 54.1-3910. Organization and government of Virginia State Bar. --The Supreme Court may promulgate rules and regulations organizing and governing the Virginia State Bar. **The Virginia State Bar shall act as an administrative agency of the Court for the purpose of investigating and reporting violations of rules and regulations adopted by the Court under this article.** . . . (Emphasis added)

Va. Code § 54.1-3915. Restrictions as to rules and regulations.---Not withstanding the foregoing provisions of this article, **the Supreme Court shall not promulgate rules or regulations prescribing a code of ethics governing the professional conduct of attorneys which are inconsistent with any statute;** . . . . (Emphasis added).

Va. Code § 54.1-3935. Procedure for revocation of license. A. **If the Supreme Court, the Court of Appeals, or any circuit court of this Commonwealth** observes, or if a complaint, verified by affidavit is made by any person to such court, that any attorney has . . . violated the Virginia Code of Professional Responsibility, **the court may assign the matter to the Virginia State Bar for investigation.** Upon receipt of the report of the Virginia State Bar, the court may issue a rule against such attorney to show cause why his license to practice law shall not be revoked. If the complaint, verified by affidavit, is made by a district committee of the Virginia State Bar, **the court** shall issue a rule against the attorney to show cause why his license to practice law shall not be revoked.

B. If the rule [to show cause] is issued by the Supreme Court . . . the rule shall be returnable to the Circuit Court of the City of Richmond. At the time the rule is issued by the Supreme Court, the Chief Justice shall designate three circuit court judges to hear and decide the case. . . . In proceedings under this section, the court shall adopt the Rules and Procedures described in Part Six, Section IV, Paragraph 13 of the Rules of Court.

C. **Bar Counsel of the Virginia State Bar shall prosecute the case. . . .**

D. Upon the hearing, **if the attorney is found guilty by the court,** his license to practice law in this Commonwealth shall be revoked . . . . . (Emphasis added)

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT No. 06-9518

No. 06-9518

In the Matter of: ISIDORO RODRIGUEZ,
Respondent.

Argued: September 25 2008
Decided: October 20, 2008

Before the Standing Panel on Attorney Discipline: MOTZ, KING, and DUNCAN, Circuit Judges.

Disciplinary proceeding concerning possible disbarment from practice in this Court. Disbarment order by unpublished per curiam opinion.

Isidoro Rodriguez, THE LAW OFFICES OF ISIDORO RODRIGUEZ, Annandale, Virginia, Pro Se. Michael L. Rigsby, CARRELL, RICE & RIGSBY, Richmond, Virginia, as prosecuting counsel.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

This proceeding presents the issue of whether attorney Isidoro Rodriguez should be disbarred from practice in this Court. On November 28, 2006, Rodriguez's license to practice law in the Commonwealth of Virginia was revoked. We are faced with the question of whether to impose a reciprocal sanction on Rodriguez and thus disbar him from practice in this Court. We initiated this proceeding on March 23, 2007, by issuance of a Notice to Show Cause, and the matter has now been fully briefed and argued. As explained below, Rodriguez's disbarment from practice in this Court is hereby ordered.

I.

On June 20, 2006, the Virginia State Bar Disciplinary Board (the "Disciplinary Board" or the "Board") initiated disciplinary proceedings against Rodriguez, then a member of the Virginia State Bar, and served him with a Subcommittee Determination (the"Certification") that specified serious allegations against him. Rodriguez answered the Certification and filed several motions, and the Board addressed and ruled on those motions in an Order of August 8, 2006. On September 19, 2006, the Board served a corrected Subcommittee Determination on Rodriguez (the "Corrected Certification"). Although Rodriguez moved to strike the Corrected Certification, the Board denied

that request on October 20, 2006.[1]

Rodriguez's hearing on the Corrected Certification was conducted before the Disciplinary Board on October 26 and 27, 2006. Thereafter, on November 28, 2006, the Board issued a Memorandum Order setting forth its findings and conclusions. The Board therein determined that Rodriguez had committed multiple violations of the Rules of Professional Conduct and thus revoked his license to practice law in the Commonwealth of Virginia.[2] By Order of July 17, 2007, the Supreme Court of Virginia affirmed the Board. Rodriguez v. Va. State Bar, No. 070283 (Va. July 17, 2007).

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[1]In its October 20, 2006 Order, denying Rodriguez's motion to strike the Corrected Certification, the Disciplinary Board explained that the revisions made by the Corrected Certification involved clerical errors only, and emphasized that Rodriguez had more than five weeks notice of the Corrected Certification prior to the scheduled hearing. The Board ruled that such notice was adequate, and there is no present contention challenging these procedures.

[2]More specifically, the Disciplinary Board found that Rodriguez had, during the litigation of two earlier cases — one involving legal work concerning sunken ships and recovery of their contents, and the other involving custody litigation relating to his son — contravened multiple provisions of the Rules of Professional Conduct: Rule 1.2 (scope of representation); Rule 1.5 (fees); Rule 1.7 (conflict of interest); Rule 1.16 (declining or terminating representation); Rule 3.1 (meritorious claims and contentions); Rule 3.4 (fairness to opposing party and counsel); Rule 3.7 (lawyer as witness); Rule 4.4 (respect for rights of third persons); Rule 7.1 (communications and advertising concerning a lawyer's services); and Rule 8.4 (misconduct).

On March 23, 2007, we issued our Notice to Show Cause, pursuant to Local Rule 46(g)(4),[3] directing Rodriguez to show cause why he should not be disbarred from practice before this Court. In response, Rodriguez moved to vacate the Notice to Show Cause and to disqualify the judges of this Court, and requested a hearing pursuant to Local Rule 46(g) (9). By Order of May 19, 2008, we denied Rodriguez's motions to vacate the Notice and disqualify the judges, granted his request for a hearing, and appointed counsel to prosecute this matter. The matter was then fully briefed and the hearing conducted.[4]

Rodriguez's admission to practice before this Court was predicated, in part, on his status as a member of the Virginia State Bar. See Fed. R. App. P. 46(a) (1) ("An attorney is eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before . . . the highest court of a state eligible for admission to the bar of a court of appeals if that attorney is of good moral and professional character and is admitted to practice before . . . the highest court of a state . . . .") Because of the revocation of his license

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[3] Local Rule 46(g) (4) requires the clerk of our Court to issue a notice to show cause "upon receipt of official notification of .. the imposition of discipline by another court."

[4] Pursuant to Local Rule 46 (g) (9), "[s]hould an attorney request a hearing on the matter it will be heard by the [Court's] Standing Panel [on Attorney Discipline] at a time and place of its choosing." The oral argument of September 25, 2008, constitutes the hearing requested by Rodriguez.

by the Virginia State Bar in November 2006, Rodriguez is subject to reciprocal disbarment by this Court. See Fed. R. App. P. 46(b) (1); 4th Cir. R. 46(g) (2).[5] Under Local Rule 46(g) (2), the discipline of disbarment is presumed to be the appropriate disposition in this proceeding, in that such a sanction is identical to the license revocation imposed by the Disciplinary Board.[6] As we have recognized, presumptive discipline should be imposed when the conditions established by the Supreme Court in Selling v. Radford, 243 U.S. 46 (1917), have been satisfied. See In re Fallin, 255 F.3d 195, 197 (4th Cir. 2001) . Under Selling, these conditions are specified as follows: "(1) the state must have given the attorney notice of the charges and an opportunity to be heard; (2) the evidence must support the findings made; and (3) there must be no other 'grave reason' for ignoring the actions taken." Wrighten v. United States, 550 F.2d 990, 991 (4th Cir. .1977) (citing Selling, 243 U.S. at 51).

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[5]More specifically, Federal Rule of Appellate Procedure 46(b) (1) provides, in pertinent part, that "(a] member of the court's bar is subject to suspension or disbarment by the court if the member: (A) has been suspended or disbarred from practice in any other court . . . ." Local Rule 46(g) (2) provides that "(t]he identical discipline imposed by another court is presumed appropriate for discipline taken as a result of that other court's action . . . ."

[6]Pursuant to the Rules of Procedure for Disciplining, Suspending and Disbarring Attorneys adopted by the Supreme Court of Virginia, "Disbarment' has the same meaning as Revocation." Supreme Court of Virginia Rule Pt. 6, § IV, ¶ 13. Accordingly, a disbarment by this Court is the equivalent of a license revocation by the Board.

In this proceeding, Rodriguez takes issue with the first Selling condition only, contending that the Disciplinary Board lacked jurisdiction under the Constitution of Virginia to revoke his license to practice in the Commonwealth. More specifically, he asserts that Virginia's disciplinary procedures contravene the separation of powers clause of the Constitution of Virginia, and that only a Virginia court of record —rather than the Board
—possesses the authority to sanction a Virginia attorney for professional misconduct. As a result, Rodriguez asserts that the revocation of his law license by the Board is void and that our reliance thereon would contravene the first Selling condition.

Importantly, Rodriguez presented the foregoing contention in his appeal of the Disciplinary Board's action to the Supreme Court of Virginia. As the Supreme Court has recognized, "the States have a compelling interest in the practice of professions within their boundaries, and . . . have broad power to establish standards for licensing practitioners and regulating the practice of professions." Goldfarb v. Va. State Bar, 421 U.S.
773, 792 (1975). In its Order of July 17, 2007, the Supreme Court of Virginia affirmed the revocation of Rodriguez's license by the Board, thus rejecting the contention that his disbarment was void under the Constitution of Virginia. That determination was a matter within it power and there is no basis for that ruling to be disturbed by our Court. Moreover, Rodriguez's balance-of-powers contention is not an issue contemplated by the first Selling condition. See In re Ruffalo, 390 U.S. 544, 550 (1968) (explaining that

attorney "entitled to procedural due process, which includes fair notice of the charge").

Because the Disciplinary Board's revocation of Rodriguez's license to practice in the Commonwealth of Virginia must be deemed valid in this proceeding, we need only assess whether Selling has been contravened. Predicated on our independent assessment of the positions of the parties, we are satisfied that the Selling conditions have been met. First, although Rodriguez asserts, as discussed above, that he was somehow denied due process, the proceedings before the Board afforded him proper notice and a sufficient opportunity to be heard. Indeed, Rodriguez received notice of the charges against him and exercised his opportunity to respond, filing multiple motions and presenting his cause in the adversarial Board proceedings. With respect to the second and third Selling conditions, the Board's license revocation was amply supported by the law and the evidence, and Rodriguez is unable to show that there "grave reason" that we should decline to honor the decision. Because Selling has been satisfied, we defer sanction of license revocation imposed by the Board.

In these circumstances, we are constrained to disbar Rodriguez from practice before this Court.[7]
DISBARMENT ORDERED

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[7]Local Rule 46(g) (11) requires, in part, that our order imposing discipline set forth "the terms upon which reinstatement will occur or be considered by the Court." Accordingly, we note that our order of disbarment does not preclude Rodriguez from applying for readmission to practice in this Court if his membership in the Virginia Bar is reinstated, or if he otherwise complies with the provisions of Federal Rule of Appellate Procedure 46(a) (1).

Filed: July 16, 2008

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT No. 06-9518

In the Matter of: ISIDORO RODRIGUEZ,
Respondent.

ORDER

Respondent filed a motion for a temporary retraining order and preliminary injunction. The Court denies the motion.

Entered at the direction of Judge King with the concurrence of Judge Motz and Judge Duncan.

For the Court
Patricia S. Connor
CLERK

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

IN RE: Letter from Isidoro Rodriguez

ORDER

The Clerk has received a rambling, ten-page letter from Mr. Isidoro Rodriguez, who inaccurately indicates that he is "a member in good standing of this Court" and requests a show cause hearing, pursuant to 18 U.S.C. § 4 and 3771, to review the Virginia State Bar's decision to revoke his license to practice law.[1]

Rodriguez has put forth no basis for a show cause hearing under 18 U.S.C. §§ 4 or 3771. See In Re: Isadoro Rodriguez, (sic) NO. 08-1444, 2008 WL 1862702 (4th Cir. April25, 2008) (unpublished) (copy

[1]Rodriguez's Virginia law license was revoked on October 27, 2006. In The Matter of Isidoro Rodriguez, VSB Docket Nos. 04-052-0794 and 04-052-1044 (Order Entered November 28, 2006). On June 29, 2007, the Supreme Court of Virginia affirmed the revocation in an unpublished order. Case No. 070283. As a result of his disbarment, Rodriguez is ineligible to practice before this Court under Local Rule 83 .1(A).

attached). Accordingly, no action will be taken on his letter, and it is hereby

ORDERED that the Clerk assign Rodriguez's letter and this Order a miscellaneous case number and forward a copy of this Order to Rodriguez.

Entered this 28th day of May, 2008.

/s/

Leonie M. Brinkema
United States District Judge

Alexandria, Virginia

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT No. 08-1444
In Re: ISIDORO RODRIGUEZ, Petitioner.
On Petition for Writ of Mandamus.

ORDER

FILED: May 15, 2008

UNPUBLISHED

The petition for rehearing en banc was circulated to the full Court. No poll was requested. The Court denies the petition for rehearing en banc. The Court denies the motion to disqualify.

For the Court
/s/ Patricia S. Connor, Clerk

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT No. 08-1444
In Re: ISIDORO RODRIGUEZ, Petitioner.
On Petition for Writ of Mandamus.

Submitted: April 23, 2008 Decided: April 25, 2008

Before MOTZ, KING, and DUNCAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Isidoro Rodriguez, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Isidoro Rodriguez petitions for writ of mandamus pursuant to the Crime Victims' Rights Act, 18 U.S.C. § 3771. He asserts that he is entitled to mandamus relief because of the "summary dismissal below . . . of his action filed in the United States District for the District of Columbia . . . pursuant to RICO, the Federal Tort Claims Act, the Virginia Tort Claims Act, and Virginia Business Conspiracy Act." Petitioner also claims that he is entitled to relief because of the denial of his request to the Federal Courts of Appeal and the Tax Court to grant him a hearing to "challenge the void order of the Virginia State Bar."

Petitioner's request for mandamus relief is denied. Petitioner was not entitled to the protections of

18 U.S.C. § 3771 in his district court proceedings which were civil in nature, and in his attempts to challenge the decision of the Virginia State Disciplinary Board. See 18 U.S.C. § 3771(d)(3).

Finding no application of 18 U.S.C. § 3771 to these proceedings, we deny the petition.

PETITION DENIED

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 29th *day of* June, 2007.

Isidoro Rodriguez, Esq.

Appellant,

v. Record No. 070283, VSB Docket Nos. 04-052-0794, And 04-052-1044

Virginia State Bar,

Appellee.

Upon an appeal of right from an order entered by the Virginia State Bar Disciplinary Board.

Upon consideration of the record, briefs, and arguments by appellant, in proper person, and by counsel for the appellee, the Court is of the opinion that there is no error in the order of the Virginia State Bar Disciplinary Board (the "Board") revoking Isidoro Rodriguez's license to practice law in the Commonwealth of Virginia based upon finding that he violated Rules 1.2, 1.5, 1.7, 1.16, 3.1, 3.4, 3.7, 4.4, 7.1 and 8.4 of the Virginia Rules of Professional Conduct.

> In reviewing the Board's decision in a disciplinary proceeding, we conduct an independent examination of the entire record. We consider the evidence and all reasonable inferences that may be drawn form the evidence in the light most favorable to the Bar the prevailing party in the Board proceeding. We give the Board's factual finding substantialweight and view them as prima facie correct. While we do not give the Board's conclusions the weight of a jury verdict, we will sustain those conclusions unless it appears they

are not justified by reasonable view of the evidence or are contrary to law. Barrett v. Virginia State Bar, 269 Va. 583, 587-88, 611 S.E.2d 375, 377 (2005) (quoting Williams v. Virginia State Bar, 261 Va. 258, 264, 542 S.E.2d 385, 389 (2001) (citations omitted); see also El-Amin v. Virginia State Bar, 257 Va. 608 612, 514 S.e.2d 163, 165 (1999); Myers v. Virginia State Bar, 226 Va. 630, 632, 312 S.E.2d 286, 287 (1984).

In making its determination, the Board considered allegations that Rodriguez violated the Rules of Professional Conduct during litigation involving two sets of cases. One group of cases involving Rodriguez's relationship and work with Sea Search Armada. The other group involved custody litigation regarding his son. The Virginia State Bar proved by clear and convincing evidence that Rodriguez violated Rules 1.2(a), 1.5(a), 1.16(a)(3), 3.4(I), 7.1(a), and 8.4(b) and (c) in his relationship with and representation of Sea Search Armada, including his attempts to recover unpaid attorney's fees. The Virginia State Bar proved by clear and convincing evidence that Rodriguez violated Rules1.7(b), 3.1, 3.4(d)(h)(i)(j), 3.7(a), 4.4, and 8.4.

We independently review each of the alleged Rule violations and find no error in the Board's order. Accordingiy, the order appealed from is affirmed.

Appellant shall pay to the appellee thirty dollars damages.

This order shall be certified to the Virginia State Bar Disciplinary Board.

A Copy,Teste: /S/Patricia L. Hanninton, Clerk

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

IN THE MATTER OF ISIDORO RODRIGUEZ
VSB DOCKET NOS. 04-052-0794 and 04-052-1044

ORDER OF VIRGINIA STATE BAR DISCIPLINARY BOARD

THIS MATTER came on to be heard on the 26th and 27th days of October, 2006, before a panel of the Disciplinary Board consisting of James L Banks, Jr., 1st Vice-Chair, presiding,(the "Chair"), William C. Boyce Jr, Glenn M. Hodge, William F. (Hover, and Stephen A. Wannall, Lay member. The Virginia State Bar ("VSB" or "Bar") was represented by Noel D. Sengel, Senior Assistant Bar Counsel. The Respondent, Isidro Rodriguez, appeared in person and represented himself. The Chair polled the members of the Board Panel as to whether any of them was aware of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member; including the Chair, responded in the negative. Donna T. Chandler, RPR, RMR, CCR of Chandler & Ralasz, court reporter. P.O. Box 9349, Richmond, Virginia, 23227, (804-730-1222) after being duly sworn, reported the hearing and transcribed the proceedings.

The matter came before the Board on the Subcommittee Determination (Corrected Certification) by the Fifth District Committee

Section II.

At the beginning of the proceedings the Respondent renewed his motion for the members of the panel to disqualify themselves as being interested patties for the reasons stated in his written motion previously filed. Upon consideration of this motion it was denied by the Panel for the reasons previously stated in the Board's Order of August 8,2006 that originally addressed Respondent's Motion to Recuse and Disqualify Members of the Disciplinary Board Within the Jurisdiction of N. Virginia and the U.S. Dist. Ct. for the RD. of Va. so to Assure Impartiality.

FINDINGS OF FACT

VSB Exhibits 1-92 were admitted during the course of the hearing without objection. The Respondent's Exhibits 1-42 were admitted during the course of the hearing without objection or over Bar counsel's objection. The VSB presented evidence through its witnesses, the Respondent cross-examined the witnesses and thereafter testified on his own behalf. After consideration of the exhibits and the testimony the Board makes the following findings of fact on the basis of clear and convincing evidence:

VSBNo. 04-052-0794

1. At all times relevant hereto, Isidoro Rodriguez, hereinafter the "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record

with the Virginia State Bar has been 7924 Peyton Forest Trail, Annandale, VA 22003-1560. VSB Ex.

1. The Respondent received paper notice of this proceeding as required by Part Six, IV, 13 (E) and (I)(a) of the Rules of Virginia Supreme Court. VSB Ex. 2.

2. The Complainant, Jack Harbeston, hereinafter referred to as "Harbeston", was the managing director of Sea Search Armada ("SSA") a Cayman Island entity that invests in and conducts searches for sunken treasure ships and engages in the salvage and the recovery of their contents. Sometime prior to 1988 SSA had discovered what it thought to be the remains of sunken Spanish ships off the coast of Colombia. SSA had been unable to have its rights to any sunken treasure recognized by the government of Columbia and was looking for legal representation in Colombia to assert its claims. Harbeston sought assistance from the Economic Officer at the United States Embassy in Bogota, Colombia for names of attorneys who could represent SSA The Economic Officer provided Harbeston with a list of attorneys in Colombia which included the Respondent as a member of the partnership of Devis and Rodriguez. Harbeston subsequently contacted the Respondent regarding possible legal representatio i. In his conversation with the Respondent, Harbeston learned that Devis, a Colombian attorney, would handle any litigation on behalf of SSA in the Colombian courts. Harbeston was looking for an American attorney, if possible, because of his concerns as to the potentially divided loyalty of a Colombian attorney. In correspondence between the Respondent and

Harbeston, Respondent noted that he was the only attorney licensed in the United States working in Colombia and as such his firm was subject to the same standards as law firm in the United States; that unlike any other firm in Colombia his firm "must comply with the State of Virginia Bar Association's Ethics of Professional Responsibility." VSB Ex. 4.

3. SSA subsequently hired the firm of Devis and Rodriguez. By agreement dated October 20, 1988, the parties entered into a representation agreement prepared by Rodriguez which set forth the terms of the engagement including a fee arrangement on an hourly basis that had been discussed prior to the execution of the agreement. VSB Ex. 7. By affidavit dated October 21, 1988, Harbeston, as managing Director of SSA, authorized the law firm of Devis and Rodriguez to act as SSA's legal representative to pursue its claims in Colombia.

4. In order for SSA to proceed with its claims in Colombia, SSA was required to appoint an agent with broad powers to represent SSA. By agreement dated December 16, 1988, executed in the District of Columbia, SSA appointed the Respondent as its legal representative in Colombia. Respondent's Ex. 8. However, Harbeston and SSA were concerned with the scope of the general power of attorney appointing Rodriguez as its agent in Colombia (Respondent's Ex. 8) and sought to limit his authority by advising the Respondent that he could only act upon the written authorization of Harbeston. By letter dated December 14, 1988, the Respondent acknowledged this limitation on his

authority, noting that any violation of the restriction "will result in an action before The Virginia Bar Ethics Committee". VSB Ex. 9. By memorandum dated December 13, 1988, Harbeston advised all law firms employed by 58.4, including Devis and Rodriguez, that John Erlichman would coordinate and manage all litigation by SSA. VSB Ex. 8.

5. By letter dated January10, 1989 SSA authorized Respondent as its legal representative in Colombia to file a lawsuit against the Republic of Colombia to confirm its rights to the sunken ships. VSB Ex. 12. Thereafter, Devis proceeded to pursue SSA's claims in the courts of Colombia with apparent skill and professionalism to the satisfaction of SSA. Harbeston soon became dissatisfied with the Respondent's performance because of actions he took without written authorization but nevertheless continued the representation arrangement because of his satisfaction with Devis' performance as a litigator. By memorandum to Respondent dated June 9, 1989, (VSB Ex. 13) Harbeston reaffirmed that Respondent was to take no action on behalf of SSA without Harbeston's written authorization as Respondent had acknowledged by his December 14,1988 letter. Sometime thereafter, but prior to January 1990, the law firm of Rodriguez and Devis had dissolved but Devis continued to represent SSA in its ongoing litigation against the Republic of Colombia. By agreement dated January 3, 1991, Respondent, acting as attorney for SSA, entered into a professional services agreement with Devis to continue with the litigation on behalf of SSA

against the Republic of Colombia. This agreement changed the fee arrangement to a contingency fee arrangement whereby Devis would receive 20% of any recovery. VSB Ex. 14. Devis and the Respondent then entered into an agreement to share any contingent fee recovery.

6. By request dated January 3, 1990, the Respondent sought a legal ethics opinion from the VSB that as a Virginia attorney who had entered into a contract in Idaho to be performed in a foreign country, whether he could terminate his representation because the client had failed to pay his fee and could sue the client to collect such a fee. The VSB Ethics Committee gave its opinion on the issue (LEO 1325) that under the facts presented, the Respondent could terminate his representation and sue the client for fees, with the opinion concluding with the customary notice that it was an advisory opinion and not binding on any court. VSB Ex. 18.

7. Devis continued the litigation successfully as the case made its way through the Colombian judicial system as the Colombian government appealed each adverse decision. Respondent does not appear to have played any role in the litigation. By letter dated March 24,2000 Devis advised Respondent not to use his name in Respondent's professional activities, and that Harbeston was upset with Respondent's activities and wanted to revoke the power of attorney. VSB Ex. 15. Devis acknowledged he would honor their contingent fee sharing arrangement By letter dated April 6,2000, Harbeston revoked the general power of attorney from SSA to Respondent (which he had forgotten to do earlier), stating that neither SSA nor its related

entities owed Respondent any legal fees and that any understanding relating to fees was in the agreement between Devis and Respondent to share any contingency fee. VSB Ex. 16.

8. In September of 2000 the Respondent filed suit against SSA in the United States District Court for the Eastern District of Virginia seeking to enforce a claim for attorney's fees in the amount of $4.5 million against SSA. VSB Ex. 19, The Respondent testified that he based the amount of his attorney's fee claim on the annual salary ($300,000 to $400,000) of a legal representative of a United States company in a foreign land for a period of 12 years. Included as defendants in this litigation were Harbeston, related entities to SSA and Devis. None of the defendants were residents of the Commonwealth of Virginia. The Respondent basis for jurisdiction by the federal court in Virginia was the fact that he was a Virginia attorney, Virginia Code Section 54.1-3932 grants an attorney a lien for fees and LEO 1325 which said he could sue his client. The defendants in this litigation obtained the services of Harrison Pledger, a Virginia attorney, who filed a motion to dismiss based on the lack of personal jurisdiction over the defendants. This motion was granted and the suit was dismissed. The Respondent then appealed to the Fourth Circuit Court of Appeals and that court affirmed the District Court's ruling. The Respondent then petitioned for a Writ of *Certiorari* in the United States Supreme Court but that petition was denied.

9. After the denial of The Writ of Certiorari by the United States Supreme Court the

Respondent filed a slightly different law suit in the United States District Court for the Eastern District of Virginia against the defendants in the earlier suit and also added several other defendants who were investors in SSA or related entities. VSB Ex. 20. The District Court dismissed this second law suit, finding that the Respondent had failed to plead additional facts to the first suit to give the court personal jurisdiction over any of the defendants. This ruling was affirmed on appeal to the Fourth Circuit The Respondent then sought a Writ of *Certiorari* from the United States Supreme Court which was also denied.

10. While the appeal of the second lawsuit was pending, the Respondent filed a third similar lawsuit - this time in the Circuit Court of Fairfax County against SSA. In this third lawsuit the Respondent named the defendants in the second law suit and Harrison Pledger and his law firm as defendants. VSB Ex. 21. This law suit was also dismissed but the court denied the defendants' motions for sanctions.

11. The Respondent created a website which displayed false and misleading information regarding his relationship with SSA and his participation in the litigation in Colombia. VSB Ex 24 & 25. On the site, the Respondent claimed that in 1988, at the request of the United States Department of State, he became SSA's legal representative and managing attorney responsible for managing alternative dispute resolution negotiations and outside counsel in litigation against the government of Colombia, posts he claims he held until 2000. These assertions are not true. On

his resume, the Respondent listed a LLM Civil law degree from the University of Bordeaux. While the Respondent attended a class at the University of Bordeaux, he never received a degree from that university. The Respondent also listed an American Trial Lawyers Ultimate Trial Lawyer Certification. There is no such certification. The basis for Respondent's claim is the fact that he attended a one week continuing legal education program sponsored byte Association of Trial Lawyers of American titled "Ultimate Trial Advocacy".

12. Respondent, in 2004,while communicating with the U.S. State Department regarding Freedom of Information Act ("FOIA") requests he had made for information relating to SSA litigation, represented that he was the attorney for SSA notwithstanding the fact that Harbeston had revoked his authority in 2000. VSB Ex. 23. Respondent claimed that since the power of attorney filed with the Colombian government had never been terminated he was not making a misrepresentation in his FOIA request.

VSB Docket No. 04-502-1044

1. The Respondent lived for many years in Colombia and had married Amalin Hazbun Escaf a citizen of Colombia. One son was born of the marriage. The marriage ultimately ended in a divorce in Colombia with the wife/mother obtaining custody of the son by order of a Colombian court with visitation rights to the Respondent.

2. The Respondent subsequently returned to the United States where he has been living and his

son visited him pursuant to the visitation rights granted by the Colombian Court. In 2001 while the son was visiting the Respondent the Respondent refused to return his son to Colombia and filed an action in the Juvenile and Domestic Relations Court in Fairfax County to gain custody of his son.

3. In 2001, subsequent to the filing of Respondent's suit in the Juvenile and Domestic Relations Court in Fairfax County, Respondent's ex-wife filed an action in the United States District Court for the Eastern District of Virginia, under the Hague Convention on the Civil Aspects of Child Abduction (the "Hague Convention") and the International Child Abduction Remedies Act ("ICARA") in order to secure the return to Colombia of her son. VSB Ex. 34. In this litigation she was represented by Patrick Stiehm, a Virginia attorney who had undertaken this representation *pro bono* at the request of the National Center for Missing and Exploited Children ("NCMEC"). NCMEC is a non profit corporation that acts as a neutral in facilitating the processing of claims under the Hague Convention and ICARA. When Stiehm initially contacted Respondent to
inform him of the pending litigation, Respondent told Stiehm that his *pro bono* representation would cost Stiehn "a big chunk of change." In keeping with this threat, Respondent immediately filed a motion for sanctions against Stiehn (VSB Ex. 35) but that motion was denied. VSB Ex. 38. However, Respondent's subsequent litigation described herein, which included Stiehm as a defendant, resulted in Stiehm incurring significant legal expenses to respond to meritless and vexatious litigation.. After

a bench trial the Court ruled that the Respondent had kept the child in Virginia in violation of his ex-wife's custody rights. VSB Ex. 39. The Court ordered that the child be removed from the Respondent's custody and returned to the child's mother in Colombia The Respondent's appeals to the Fourth Circuit Court of Appeals and the United States Supreme Court were denied. After all appeals and stays were denied the son was reunited with his mother and left for Colombia in June of 2002.

4. In January of 2003, the Respondent filed suit in the District Court for the District of Columbia against numerous defendants, including NCMEC, several employees of NCMEC, the United States District Court for the Eastern District of Virginia, the Fourth Circuit Court of Appeals, the Circuit Court of Fairfax County, the Court of Appeals of Virginia, the District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia, various judges, a court clerk, the United States Department of State, Patrick Stiehm and Stephen Cullen (an attorney who had assisted Stiehm in the Virginia litigation) claiming a constitutional conspiracy by the defendants against him in his litigation in Virginia. VSB Ex. 43. Staff members of NCMEC had been witnesses in the Virginia litigation and NCMEC had provided legal representation to witnesses in the litigation in Virginia. In filing this litigation in which Respondent and his son were named as plaintiffs, Respondent who is not licensed to practice in the District of Columbia and had not obtained an order to appear *pro hoc vice*, attempted

to act as attorney for his son.

5. In March of 2003, the Respondent filed a Writ of Mandamus in an attempt to compel NCMEC to take actions to force the country of Colombia to grant the Respondent access to his son. VSB Ex. 64. By letter dated September 24,2003, Warren L. Dennis, Esquire, counsel for NCMEC, informed the Clerk of the United States Supreme Court that NCMEC would not be filing a responsive brief to the Respondent's Writ because, inter alia, it had no power to compel the government of the country of Colombia to do anything. VSB Ex. 65. Upon receipt of a copy of the letter, the Respondent called Mr. Dennis's office and left a voice mail message in which he threatened to file an ethics complaint because the letter falsely characterized the Respondent's Virginia litigation. Also, by letter dated September 29,2003, the Respondent gave notice of his intent to file a judicial complaint and District of Columbia Bar complaint against those involved in the litigation unless facts already proved were proved within twenty-four (24) hours. VSB Ex 67.

6. In the District of Columbia litigation the Respondent repeatedly filed pleadings with no basis in law or fact. VSB Ex. 43 - 81. In an amended complaint (VSB Ex. 72) Respondent asserted a claim under the Racketeer Influenced and Corrupt Organization Act (RICO) 18 U.S.C. 1961. Included as defendants in the complaint were the United States Supreme Court; the United States Court of Appeals for the Fourth Circuit; the United States Court of Appeals for the District of Columbia, the United States District Court for the Eastern District

of Virginia, the United States District Court for the District of Columbia, the Virginia Supreme Court, the Court of Appeals of Virginia and the Circuit Court of Fairfax County. Respondent's actions in the D.C. litigation clearly demonstrates his use of the legal system to harass and intimidate anyone whom he considered to have been involved in the Virginia litigation that returned his son to Colombia and to re-litigate the Virginia case.

7. Respondent's actions in naming NCMEC and some of its employees as defendants in this litigation cost NCMEC over $160,000 in legal expenses and nearly bankrupted the organization. Throughout the course of this litigation, the Respondent misrepresented his credentials as a lawyer and his license status in the District of Columbia and New York to the courts and opposing parties. The Respondent graduated from law school in 1976. He was first licensed to practice law in the Commonwealth of Virginia in 1982. Virginia is the only jurisdiction in which Respondent has a license to practice law. The Respondent listed a number of governmental and quasi governmental legal jobs in the District of Columbia on his resume between the years 1976 and 1982 requiring a valid law license in the United States, during which period he was not licensed to practice law anywhere in the United States. The Respondent also noted on various documents that he practiced law in the District of Columbia for a period of time after his licensure in Virginia, but has never been licensed in the District of Columbia.

8. During this litigation, the Respondent filed pleadings and attempted to represent his minor son

on several occasions in the District of Columbia litigation, despite the fact there was a conflict of interest between the father and son, despite the fact that the Respondent would be a witness in the case and despite the fact that the judge instructed the Respondent to cease representing his son. VSB Ex 48 & 50. The Respondent's law partner also attempted to represent the son but the court refused to permit that representation.

I. MISCONDUCT

The Certification for VSB Docket No. 04-052-0794 charges violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

RULE 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill

requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer,

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

RULE 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or where representation has commenced, shall withdraw from the representation of a client if:

(3) the lawyer is discharged.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(I) file a suit, initiate criminal charges, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 7.1 Communications And Advertising Concerning A Lawyer's Services

(a)A lawyer shall not, on behalf of the lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication or advertisement violates this Rule if it:

(1) contains misleading fee information;

(2) states or implies that the outcome of a particular legal matter was not or will not be related to its facts or merits;

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(4) contains an endorsement by a celebrity or public figure who is not a client of the firm without disclosure (I) of the fact that the speaker is not a client of the lawyer or the firm, and (ii) whether the speaker is being paid for the appearance or endorsement; or

(5) contains a portrayal of a client by a non-client without a disclosure that the depiction is a dramatization.

In the determination of whether a communication or advertisement violates this Rule, the communication or advertisement shall be considered in its entirety including any qualifying statements or disclaimers contained therein.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;

(c) engage in professional conduct involving

dishonesty, fraud, deceit or misrepresentation;

The Certification for VSB Docket No. 04-052-1044 charges violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.7 Conflict of Interest: General Rule
(b) A lawyer shall not represent a client if the representation of that client may be materially limited by
the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
(1) the lawyer reasonably believes the representation will not be adversely affected; and
(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

RULE 3.1 Meritorious Claims And Contentions
A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could
result in incarceration may nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly
(1) make a false statement of fact or law to a tribunal;
(2) fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client, subject to Rule 1.6;
(3) fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client and not disclosed by opposing counsel; or
(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity; the lawyer shall take reasonable remedial measures.

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:
(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.
(h) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter.
(I) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trail, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another. Effective January 1,2004
(j) Present or threaten to present criminal or disciplinary charges solely to obtain an advantage in a civil matter,

(k) File a suit, initiate criminal charges, assert a position, conduct a defense, delay a trail, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

RULE 3.7 Lawyer As Witness

(a) A lawyer shall not act as an advocate in an adversarial proceeding in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

RULE 44 Respect For Rights Of Third Persons

In representing a client, a lawyer shall not use means that have no purpose other than to embarrass, delay; or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

RULE 5.5 Unauthorized Practice Of Law

(a) A lawyer shall not:

(1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or

(2) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

RULE 7.1. Communications Concerning A Lawyer's Services

(a) A lawyer shall not, on behalf of the

lawyer or any other lawyer affiliated with the lawyer or the firm, use or participate in the use of any form of public communication if such communication contains a false, fraudulent, misleading, or deceptive statement or claim. For example, a communication violates this Rule if it:

(1) contains false or misleading fee information; or

(2) states or implies that the outcome of a particular legal matter was not OR will not be related to its facts or merits; or

(3) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(4) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law.

RULE 7.4 Communication Of Fields Of Practice And Certification

Lawyers may state, announce or hold themselves out as limiting their practice in a particular area or field of law so long as the communication of such limitation of practice is in accordance with the standards of this Rule, Rule 7.1, and Rule 7.3, as appropriate. A lawyer shall not state or imply that the lawyer has been recognized or certified as a specialist in a particular field of law except as follows:

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in Admiralty practice may use as a designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation;

(c) A lawyer who has been certified by the Supreme Court of Virginia as a specialist in some capacity may use the designation of being so certified, e.g., "certified mediator" or a substantially similar designation;

(d) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states that there is no procedure in the Commonwealth of Virginia for approving certifying organizations. Effective Nov. 1,2002

(a) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation;

(b) A lawyer engaged in Admiralty practice may use as a designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation;

(c) A lawyer who has been certified by the Supreme Court of Virginia as a specialist in some capacity may use the designation of being so certified, e.g., "certified mediator" or a substantially similar designation;

(d) A lawyer may communicate the fact that the lawyer has been certified as a specialist in a field of law by a named organization, provided that the communication clearly states that there is no procedure in the Commonwealth of Virginia for approving certifying organizations.

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:
(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer;
(c) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation; Effective Mar. 25, 2003
(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law.
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

III. DISPOSITION

Upon review of the forgoing finding of facts, the exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1- 92, the exhibits presented by the Respondent as The Respondent's Exhibits 1-42, the evidence from witnesses presented on behalf of the VSB and evidence presented by the Respondent in the form of his own
testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After deliberation the Board reconvened and stated that it had found by clear and convincing evidence that the Respondent had violated The following Rules of Professional Conduct: in Docket No. 04-052-0794, Rule 1.2(a); 1.5(a); 1.16(a)(3); 3.4(I); 7.1(a); 8.4(b) & ©); in Docket No. 04-052-1044. Rule 1.7(b) 1-2; 3.1; 3.4 (d)(h)(i)(j); 3.7(a)(1-3); 4.4 and 8(b) and (c).

The Board stated that the Bar had failed to

prove by clear and convincing evidence any violation of the following the Rules of Professional Conduct: 3.3(a)1-4; 5.5(a)1-2; 7.1(a)1-4; 7.4(a)(b)(c)(d); and effective Nov. 1, 2002 7.4(a)(b)(c)(d).

The bases for the Boards finding of violation of the Rules of Professional Conduct are as follows:

VSB Docket No. 04-052-0794

(a) The Respondent violated Rule 1.2(a) (Scope of Representation) in that his authorization to act on behalf of his client SSA was limited, but he nonetheless acted without written authorization from his client. Furthermore, after he had been discharged by SSA, he wrote the Department of State claiming to be the managing attorney of SSA, which was not the case. He also made a FOIA request without any authorization.

(b) The Respondent violated Rule 1.5(a) 1-8 (Fees) with his claim of a fee of 4.5 million dollars. Respondent acknowledged that the fee arrangement was a contingent fee arrangement and no recovery had been made. Therefore, there was no basis to claim a fee. Furthermore, the amount of the fee, $4.5 million, does not appear to have any reasonable relationship to work actually performed which is necessary for a recovery on a quantum merit basis. Respondent testified that he determined the amount based upon what the salary would be for a legal representative for a U.S. company operating in a foreign country.

(c) The Respondent violated Rule 1.16 (a)(3) (Declining or Terminating Representation) by representing that he was SSA's managing attorney

in a FOIA request (VSB Ex. 23), which he made well after SSA had terminated their relationship.

(d) The Respondent violated Rule 3.4(I) (Fairness to Opposing Party and Counsel) by tiling the litigation in the United States District Court for the Eastern District of Virginia and the Circuit Court of Fairfax County, Virginia. It should appear to any reasonably competent lawyer that the courts did not have jurisdiction over the parties named as defendants. Even giving the Respondent the benefit of the doubt as to the first suit, he received a ruling that the court lacked personal jurisdiction over the defendants which was upheld on appeal. He nonetheless filed a second suit with the same infirmity seeking the same recovery. Furthermore, his suit in the Circuit Court of Fairfax County, Virginia, included as a defendant Harrison Pledger and his law firm, merely because Mr. Pledger had acted as defense counsel in the two suits in the federal court

(e) The Respondent violated Rule 7.1(a) 1-5 (Communication Concerning a Lawyer's Services) by misrepresentation on his website and resume. VSB Exhibits 24 and 25 show that Mr. Rodriguez, on the website he created, misrepresented his relationship with SSA. He misrepresented what he did for SSA and how he became employed by SSA. He misrepresented his education by listing an LLM civil law degree from the University of Bordeaux. He improperly claimed a certification (the American Trial Lawyer Ultimate Trial Lawyer Certification) where no such certification exists.

(f) The Respondent violated Rule 8.4(b) and 8.4(c) (Misconduct) by representing in his FOIA

request that he was the managing attorney for SSA, when the evidence shows that he clearly was not.

VSB Docket No. 04-052-1044

(a) The Respondent violated Rule 1.7(b) 1-2 (Conflict of interest) in his attempt to represent his son in the District Court for the District of Columbia and his continued actions to do so even in the face of a court ruling that there was a conflict.

(b) The Respondent violated Rule 3.1 (Meritorious Claims and Contentions) by his litigation in the District Court for the District of Columbia and his actions in the Circuit Court of Fairfax County, Virginia. The complaint filed by the Respondent with all the parties he named as defendants standing alone shows that the Respondent has violated this Rule. The numerous pleadings filed thereafter further demonstrate that the Respondent's aim was to punish anyone who had any connection with the litigation filed by his former wife to regain custody of their son. Any attorney who had in any way appeared in that litigation ended up being named as a defendant. NCMEC and several of its staff were named as defendants resulting in a legal cost to NCMEC alone of $160,090.00 Attorney Patrick Stiehm who had taken Respondent's ex-wife's case pro bono was named as a defendant thereby making good on Respondent's claim that Stiehm's representation would cost him a "big chunk of change."

Furthermore, in litigation in Fairfax County, Respondent subpoenaed two members of NCMEC as witnesses for a hearing involving his efforts to file

a Statement of the Case for an appeal, when these two staff members had nothing to do with the Fairfax litigation. While the subpoenas were quashed they nevertheless had the effect of harassing the NCMEC staff members. Remarkably this is the only instance in which the Respondent was sanctioned by a court.

Perhaps if he had been sanctioned earlier, either by the United States District Court for the Eastern District of Virginia or the District Court for the District of Columbia, such action would have put a stop to Respondent's unwarranted and vexatious conduct. Unfortunately neither of the courts saw fit to impose sanctions.

(c) The Respondent violated Rule 3.4(d)(h(i)(j) (Fairness to Opposing Party and Counsel) by the following conduct: (1) by continuing to attempt to represent his son in the District of Columbia litigation in the face of a court ruling, in violation of Rule 3.4(d); (2) by threatening the NCMEC attorney with a bar complaint and filing a criminal complaint with the FBI, in violation of 3.4(h); (3) by filing a motion for sanctions against Patrick Stiehm and naming Stiehm as a defendant in the District of Columbia litigation and by his entire course of conduct in the District of Columbia litigation, in violation of Rule 3.4(i)(j);

(d) The Respondent violated Rule 3.7(a) 1-3 (Lawyer as Witness) by acting as an advocate when he was a necessary witness in the Eastern District of Virginia litigation.

(e) The Respondent violated Rule 4.4 (Respect for the Rights of Third Persons) by the whole course of litigation in the District Court for the District of

Columbia. In addition, his subpoena of Ms. Brinkerhoff and Mr. Dennis to the Fairfax Circuit Court for a bearing on the Statement of Facts to be submitted for appeal further demonstrates a violation of this Rule.

(f) The Respondent violated Rule 8.4(b) and 8.4(c) (Misconduct) in asserting a RICO claim and by his letter to the FBI.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and the Respondent, including the Respondent's prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by the Respondent.

After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as REVOCATION.

The Board in reaching its decision of revocation recognized that the violation of certain of the Rules such as Rule 1.5(a), 7.1, and 8.4(b) & (c) standing alone may not merit the ultimate sanction of revocation. However, the Respondent's conduct by pursuing litigation in Virginia in Docket No. 04-052-0794 and in the District of Columbia in Docket No. 04-052-1044 is conduct that cannot be tolerated. While a court through sanctions can protect itself from such conduct by a deceitful and unprincipled attorney, the public must look to the VSB for protection. The other violations demonstrate Respondent's complete disregard for the Rules of Professional Conduct.

Furthermore the Respondent was defiant to any criticism of his conduct in pursuing what can only be described as meritless and vexatious

litigation. This same defiance was evident to the Board as the Respondent sought to justify his conduct. Therefore the Board concluded that the sanction of revocation was the only remedy by which the public and bar could be adequately protected.

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia is revoked, effective October 27, 2006.

It is further ORDERED that the Respondent must comply with the requirements of Part Six, § IV, ¶ 13(M) of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail, return receipt requested, of the revocation of his license to practice law in the Commonwealth of Virginia, to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care in conformity with the wishes of his client The Respondent shall give such notice within 14 days of the effective date of the revocation, and make such arrangements as are required herein within 45 days of the effective date of the revocation. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the revocation that such notices have been timely given and such arrangements made for the disposition of matters.

It is further ORDERED that if the Respondent is not handling any client matters on the effective date of October 27,2006, he shall submit an affidavit to that effect to the Clerk of the

Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13 (M) shall be determined by the Virginia State Bar Disciplinary Board, unless the Respondent makes a timely request for hearing before a three-judge court.

It is further ORDERED that pursuant to Part Six, § IV, ¶ 13,B.8.c. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess all costs against the Respondent.

It is further ORDERED that the Clerk of the Disciplinary System shall mail an attested copy of this order to the Respondent at his address of record with the Virginia State Bar, being 7924 Peyton Forest Trail, Annandale, VA 22003-1560, by certified mail, return receipt requested, and by regular mail to Noel 0. Sengel, Bar Counsel, Virginia State Bar, Suite 310, 100 North Pitt Street, Alexandria, Virginia, 22314-3133.

ENTERED this 28th day of November, 2006

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: /S/
James Leroy Banks., Jr. 1st Vice Chair